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BOOK 2062 PAGE 1276

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EXCHANGE AND SALE OF PROPERTY
SETTLEMENT AND MUTUAL RELEASE

THIS AGREEMENT, is made and entered into on this 30th day of November, 1987, by and between the PORT OF PORTLAND, a municipal corporation of the State of Oregon, hereinafter referred to as "Port," and the STATE OF OREGON, STATE LAND BOARD, acting by and through the DIVISION OF STATE LANDS, hereinafter referred to as "State."

W I T N E S S E T H

WHEREAS, an ownership dispute of longstanding duration has existed between Port and State over former submerged and submersible lands located within the Portland Harbor of the Willamette River;

WHEREAS, State is the owner of submerged and submersible lands underlying navigable waterways and holds those lands in trust for the people of this State;

WHEREAS, the Oregon legislature recognized that uncertainty exists as to the nature and extent of the State's interest in formerly submerged and submersible lands within the Willamette River and that such uncertainty conflicts with the use, development, and ownership of such land, endangers the rights and titles of landowners, and restricts the economic, scenic, and recreational potential of such land;

WHEREAS, prior to 1973, public agencies and the United States were allowed to create new lands through filling while

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THIS DOCUMENT IS RECORDED IN ACCORDANCE WITH THE PROVISIONS OF THE OREGON REVENUE CODE, AS AMENDED, WHICH MAINTAINS NO RESPONSIBILITY AS TO THE EFFECT OR PROVISIONS OF THIS DOCUMENT C871202



engaged in navigation activities without the consent of the owner of these lands;

WHEREAS, the State, prior to 1963, had no statutory mechanism or administrative process for transferring ownership of submerged or submersible lands upon which new lands had been created;

WHEREAS, the following fills have occurred within the Portland Harbor of the Willamette River:

*approximately 24.8 acres of submerged and submersible lands located within the area commonly identified as "Terminal 1" filled prior to 1963;

*approximately 2.2 acres of submerged and submersible lands located within the area commonly identified as "Terminal 1" filled in the time period from 1963 to 1973;

*approximately 27.0 acres of submerged and submersible lands located within the area commonly identified as "Terminal 2" filled prior to 1963;

*approximately 3.0 acres of submerged and submersible lands located within the area commonly identified as "Terminal 2" filled in the time period from 1963 to 1973;

*approximately 10.987 acres of submerged and submersible lands located within the area commonly identified as "Terminal 2" filled subsequent to 1973;

*approximately 11.7 acres of submerged and submersible lands located within the area commonly identified as "Terminal 4" filled prior to 1963;

*approximately 2.5 acres of submerged and submersible lands located within the area commonly identified as "Terminal 4" filled in the time period from 1963 to 1973;

*approximately 3.8 acres of submerged and submersible lands located within the area commonly identified as "Terminal 4" filled subsequent to 1973;

*approximately 22.685 acres of submerged and submersible lands located within the area commonly identified as "Swan Island Lagoon" filled subsequent to 1973;

WHEREAS the passage of time has impaired the ability to distinguish between natural and manmade changes to the shoreline, thus raising uncertainties as to the extent of State and Port ownership, particularly as to those areas filled before 1963;

WHEREAS, Port has obtained no recorded conveyance from State for any of the above-described fills;

WHEREAS, on January 1, 1971, through a merger with the Commission of Public Docks, a municipal agency of the City of Portland, the Port obtained Bargain and Sale Deeds from the Commission of Public Docks for Terminals 1, 2 and 4 as they then existed and for Albina Dock;

WHEREAS, prior to 1963, no statutory scheme existed defining the value of new land created by a public body by the placement of fill on state owned submerged and submersible lands;

WHEREAS, Port claims ownership of Terminals 1, 2 and 4 in the Willamette River, free and clear of any state interest;

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WHEREAS, State claims right, title and interest in submerged and submersible lands and new lands on which Port's Terminals 1, 2 and 4 are built, as well as the right to be paid the reasonable value of the new lands created therein by Port prior to 1973;

WHEREAS, State has also claimed right, title and interest in new lands, created by Port within Terminals 2 and 4 and certain lands at Swan Island filled after 1973, as well as the right to be paid the reasonable value of new lands created therein by Port;

WHEREAS, Port asserts that State has impliedly consented to the placement of fill at various locations within the parcels described in Exhibit B through the issuance of removal/fill permits;

WHEREAS, State asserts the issuance of a removal/fill permit is a regulatory permit and does not alter its proprietary interest in the submerged and submersible lands and newly filled lands;

WHEREAS, uncertainty as to the extent of the right, title and interest of State in said Terminals 1, 2, 4 and Swan Island and of the reasonable price to be paid to State Land Board for new lands created before and after 1973 makes difficult negotiating, developing, and financing transactions in connection with the development of those areas and creates clouds upon titles;

WHEREAS, a change has occurred in the shoreline of the

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Willamette River at the location of the Albina Dock, the Port Center at Swan Island, and the Broadway Bridge, the precise reasons for the change being uncertain;

WHEREAS, both the Port and State may claim some right, title and interest in the lands at the Albina Dock, the Port Center at Swan Island and the Broadway Bridge, which right, title and interest is clouded by whatever right, title and interest the other may claim;

WHEREAS, Port and State agree the public interest would be served by clearing title to that property described as the Albina Dock, the Port Center at Swan Island and the Broadway Bridge in Exhibit A;

WHEREAS, both Port and State may claim some right, title and interest to formerly submerged and submersible lands contiguous to the "new fill" described in Exhibit B at Swan Island Lagoon, the precise nature and extent of which right, title and interest are uncertain;

WHEREAS, both Port and State agree the public interest would be served by clearing title to that property described in Exhibit A contiguous to the "new fill" which is described in Exhibit B;

WHEREAS, both the Port and State may claim some right, title and interest in various submerged and submersible lands described in Exhibit C, located adjacent to Swan Island within the Willamette River; submerged and submersible lands lying in the Willamette River channel at Post Office Bar, some of which

lands were created through the dredging of upland owned by the Port; and submerged and submersible lands lying within the slips at Terminal 4, the extent of which is uncertain and is clouded by whatever right, title and interest the other may claim;

WHEREAS, the Port has sold, conveyed or otherwise transferred property within the existing harbor line of the Willamette River channel at Post Office Bar;

WHEREAS, both Port and State agree the public interest would be served by clearing title to the remaining submerged and submersible lands located adjacent to Swan Island and those lying within the Willamette River channel at Post Office Bar and at Terminal 4 as described in Exhibit C.

WHEREAS, Port and State believe the conveyances hereinafter made would remove said uncertainties and clouds;

WHEREAS, Port has offered the sum of \$1,647,856.00 therefor as settlement of all disputed claims and in full satisfaction of any claims of State of Oregon to payment under common law and ORS 274.925 for new lands created in the parcels described herein;

WHEREAS, the consideration of \$1,647,856.00 is derived as follows:

Those submerged and submersible lands filled at Terminal 2 after 1973, consisting of 10.987 acres @ \$46,085.88/acre	= \$506,345.60
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Those submerged and submersible lands filled at Swan Island after 1973 consisting of 22.685 acres @ \$28,000/acre	= \$635,180
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Those submerged and submersible lands filled at Terminal 4 filled after 1973 consisting of 3.8 acres @ \$28,000/acre = \$106,400

Those submerged and submersible lands filled at Terminals 1, 2 and 4 prior to 1973 consisting of 71.2 acres @ \$5,617/acre = \$399,930.40

WHEREAS, State has further determined that settlement of the disputed claims at Port Terminals 1, 2 and 4 and at Swan Island is in the best interests of the State and the Common School Fund;

WHEREAS, consent was given by the State, through the Land Board to fill approximately 10.987 acres at Terminal 2 under the provisions of ORS 274.920.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other valuable consideration, Port and State do hereby agree as follows:

1. Agreement to Exchange

Subject to the terms and conditions set forth in this Agreement, State agrees to convey to Port those parcels described in the attached Exhibits A and B in exchange for which Port agrees to convey to State those lands described in the attached Exhibit C.

2. Purchase Price, Payment

a. Total Purchase Price: Port promises to pay State, as the total purchase price for the parcels described in Exhibits A and B, the sum of \$ 1,647,856.00.

b. Payment of Total Purchase Price: The total purchase price shall be paid as follows:

(1) Port shall pay to State the sum of Eight Hundred Twenty-Three Thousand Nine Hundred Twenty-Eight Dollars (\$823,928) upon closing.

(2) Port shall pay the sum of Eight Hundred Twenty-Three Thousand Nine Hundred Twenty-Eight Dollars (\$823,928) on or before July 1, 1988.

c. Prepayments: Port may make prepayments under this Agreement at any time.

d. Place of Payments: All payments to State shall be made to State at the address of State shown in Paragraph 15 of this Agreement or to such other place or person as State may designate by written notice to Port.

5. Closing

a. Closing Date: This transaction shall be closed after both the State Land Board and Port of Portland Commission approve this Agreement. As used in this Agreement, the "closing date" means the date on which this Agreement is accepted by the State Land Board.

b. Responsibility of the Parties: At closing, Port shall pay the amount of cash specified in Paragraph 4(b)(1).

c. Deeds to Port: Upon closing, State shall execute the Quitclaim Deed attached hereto as Exhibit A and the Bargain and Sale Deed attached hereto as Exhibit B.

d. Deed to the State: Upon closing, Port shall execute the Quitclaim Deed, attached hereto as Exhibit C.

6. Title

Title to property conveyed by State under the Quitclaim Deed, Exhibit A, and under the Bargain and Sale Deed, Exhibit B, is in fee simple. Title to property conveyed by Port under the Quitclaim Deed, Exhibit C, is in fee simple. Nothing in this Section 6, however, shall be construed as a warranty, guarantee or transfer of title greater or more perfect than that conveyed by the Quitclaim Deeds attached hereto as Exhibits A and C and the Bargain and Sale Deed attached hereto as Exhibit B.

7. Authority

a. By State: State has full power, authority and legal right to enter into this Agreement and to consummate the transactions provided for herein.

b. By Port: Port is a municipal corporation in the State of Oregon and has full power, authority and legal right to enter into this Agreement and to consummate the transactions provided for herein.

8. Waiver

Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or waiver of that provision itself.

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9. Successor in Interests

This Agreement shall be binding upon and inure to the benefit of the parties, their successors, and assigns.

10. Prior Agreements

This document is the entire, final, and complete agreement of the parties pertaining to the exchange, sale and purchase of the properties identified herein, and supersedes and replaces all prior or existing written and oral agreements between the parties or their representatives relating to the Property.

11. Applicable Law

This Agreement has been entered into in Oregon and the Property is located in Oregon. The parties agree that the laws of the State of Oregon shall be applied in construing the Agreement and enforcing the rights and remedies of the parties.

12. Costs and Attorney Fees

In the event State or Port shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including but not limited to costs incurred in searching records, the cost of title reports, surveyors reports and foreclosure reports and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with nonjudicial action.

13. Number, Gender and Captions

As used herein, the singular shall include the plural, and the plural the singular. The masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

14. Survival of Covenants

Any covenants the full performance of which is not required prior to the closing or final payment of the purchase price shall survive the closing and final payment of the purchase price and be fully enforceable thereafter in accordance with their terms.

15. Notices

Notices under this Agreement shall be in writing and shall be effective when actually delivered. If mailed, a notice shall be deemed effective when deposited as registered or certified mail, postage prepaid, directed to the other party at the address shown below:

For State: Division of State Lands
 1600 State Street
 Salem, OR 97310

For Port: Legal Department
 Port of Portland
 PO Box 3259
 Portland, OR 97208

Either party may change its address for notices by written notice to the other.

16. Effect of Agreement

The parties acknowledge and it is understood that this Agreement is the compromise of doubtful and disputed claims and that payments hereunder shall never be construed at any time, for any purpose, as an admission of liability or responsibility on the part of the Port or the State who each expressly deny liability.

The parties acknowledge that this Agreement is being presented to the State Land Board and the Port of Portland Commission for the purpose of settling questions of ownership and value of land, some of which is presently occupied by the Port, and that:

A. Nothing herein shall be construed as an admission by either party, nor as a waiver, limitation or modification of any rights or claims of either party or of any positions either party might take in litigation concerning formerly submerged and submersible lands within the Willamette River.

B. Nothing herein shall be construed as impairing or altering the regulatory authority of the Division of State Lands under the removal/fill program or any other program placed with the Division of State Lands by law.

C. Nothing in this document or the deeds attached hereto as Exhibits A and B is intended to limit or restrict in any manner the rights of the public, if any, to engage in

navigation, fishery, or recreation in connection with the property described in Exhibits A and B.

D. Except for the limited purposes of showing that the Agreement was taken to the State Land Board and the Port of Portland Commission for approval, or was executed, or for the purpose of enforcing this Agreement, neither the Agreement nor its terms shall be admissible as evidence in any contested case hearing or litigation involving any ownership issues on formerly submerged and submersible lands within the Willamette River.

E. For and in consideration of \$1,647,856.00 paid to State by Port and for other good and valuable consideration, Port and State hereby mutually and forever release, acquit and discharge each other, their successors, assigns, officers, directors, commissioners and employes, of and from any and all claims, demands, liabilities, actions or causes of action, suits or causes of suit which each party now has or may in the future have against the other, arising out of or in connection with the exchange or purchase of property herein described.

Each party also promises and covenants not to bring, continue or prosecute any claim, action, suit, or proceeding, whether judicial, administrative, or otherwise, against the other for any and all rights of action, claims or demands of whatever nature relating to or arising out of the dispute over the value of the filled lands described herein.

17. Exhibits

All exhibits to this Agreement are hereby fully incorporated by reference and shall become a part of this Agreement as if the provisions were fully set forth herein.

18. Representations; Condition of Property

The parties accept the land and all other aspects of the Property in their present condition, AS IS, including latent defects, without any representation or warranties, expressed or implied, unless they are expressly set forth in this Agreement or are in writing signed by the parties.

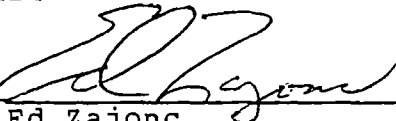
19. Express Condition Precedent

The performance of all parties under the terms of this Agreement is expressly conditioned upon the approval of the Agreement by the Port of Portland Commission and the State Land Board. In the event that either the Port Commission or the State Land Board does not approve this Agreement, the Agreement shall be null and void and of no further effect.

IN WITNESS WHEREOF, the Port and Purchaser have executed this Agreement on the date above-mentioned.

STATE

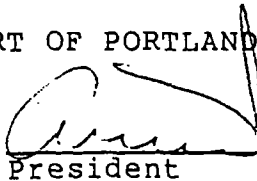
By



Ed Zajonc
Director
Division of State Lands
State of Oregon

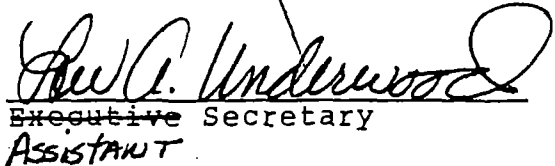
PORT OF PORTLAND

By



President

By



~~Executive~~ Secretary
ASSISTANT

APPROVED AS TO LEGAL SUFFICIENCY:

Mary T. Feldman - Herlihy
Assistant Attorney General

APPROVED AS TO LEGAL SUFFICIENCY:

M Brian Playfair
Counsel for the Port of Portland

MTFH:tla/102787/2398G

After recording return to:

Port of Portland
P.O. Box 3529
Portland, OR 97208
Attn: Brian Playfair

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